

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK and
THE BOARD OF EDUCATION FOR THE
CITY SCHOOL DISTRICT OF THE CITY
OF NEW YORK,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
EDUCATION and ELISABETH DEVOS,
*in her official capacity as the Secretary of
Education,*

Defendants.

No. 1:20-cv-04260-JGK

DECLARATION OF JOSEPH WARDENSKI

I, Joseph Wardenski, declare the following:

I am an attorney with the Office of the New York State Attorney General and counsel to Plaintiffs in this action. I submit this Declaration in support of Plaintiffs' motion for a preliminary injunction.

Attached to this Declaration are true and correct copies of the following exhibits:

Ex. 1 – American Council on Education, *Statement of ACE President Ted Mitchell on Final Title IX Regulations* (May 6, 2020), <https://www.acenet.edu/News-Room/Pages/Statement-by-ACE-President-Ted-Mitchell-on-Final-Title-IX-Regulations.aspx#:~:text=The%20regulations%20will%20undermine%20college,the%20worst%20in%20regulatory%20overreach>.

Ex. 2 – Letter from J. Shapiro *et al.* to Secretary Elisabeth DeVos *et al.* (Mar. 27, 2020).

Ex. 3 – Mark Keierleber, *DeVos releases Title IX campus sexual assault rule, courting controversy amid coronavirus pandemic*, LA School Report (May 6, 2020),

<http://laschoolreport.com/devos-releases-title-ix-campus-sexual-assault-rule-courting-controversy-amid-coronavirus-pandemic/>.

Ex. 4 – U.S. Department of Education, Office for Civil Rights, *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties* (Jan. 2001).

Ex. 5 – U.S. Department of Education, Office for Civil Rights, *Dear Colleague Letter: Sexual Harassment Issues* (Jan. 25, 2006).

Ex. 6 – U.S. Department of Education, Office for Civil Rights, *Dear Colleague Letter: Harassment and Bullying* (Oct. 26, 2010).

Ex. 7 – U.S. Department of Education, Office for Civil Rights, *Dear Colleague Letter: Sexual Violence* (Apr. 4, 2011) (withdrawn).

Ex. 8 – U.S. Department of Education, Office for Civil Rights, *Questions and Answers on Title IX and Sexual Violence* (Apr. 29, 2014) (withdrawn).

Ex. 9 – U.S. Department of Education, Office for Civil Rights, *Dear Colleague Letter: Campus Sexual Misconduct* (Sept. 22, 2017).

Ex. 10 – U.S. Department of Education, Office for Civil Rights, *Dear Colleague Letter: Prohibited Disability Harassment* (July 25, 2000).

Ex. 11 – Declaration of Laura Brantley, Executive Director of the Office of Equal Opportunity and Diversity Management, Board of Education for the City School District of the City of New York (a/k/a New York City Department of Education) (June 25, 2020).

Ex. 12 – Redline Showing the Final Rule’s Amendments to the Department of Education’s Title IX Regulations. I prepared this redline using the “Compare” feature in Microsoft Word for Office 365, comparing the full text of 34 C.F.R. pt. 106 currently in effect

with the full text of the regulations, as amended by the Final Rule, set to take effect on August 14, 2020.

Ex. 13 – Declaration of Joseph Storch, Associate Counsel/Chair of the Office of General Counsel Student Affairs Practice Group, The State University of New York (June 17, 2020).

Ex. 14 – Declaration of Rodney L. Pepe-Souvenir, University Title IX Director, City University of New York (June 18, 2020).

Ex. 15 – Declaration of Andrea Stagg, Deputy General Counsel, Barnard College (June 17, 2020).

Ex. 16 – AASA, The School Superintendents Association, *Report of Initial Findings: COVID Survey 2 Impact on Public Schools* (June 12, 2020), [https://aasa.org/uploadedFiles/AASA_Blog\(1\)/COVID19%20and%20Schools%20Detailing%20the%20Continued%20Impact_Initial%20Findings_6_16_2020_FN.pdf](https://aasa.org/uploadedFiles/AASA_Blog(1)/COVID19%20and%20Schools%20Detailing%20the%20Continued%20Impact_Initial%20Findings_6_16_2020_FN.pdf).

Ex. 17 – Declaration of Victoria A. Ajibade, Assistant Vice President of Diversity and Inclusion/Chief Diversity Officer, SUNY Downstate Health Sciences University (June 19, 2020).

Ex. 18 – Declaration of Mary Haviland, Executive Director, New York City Alliance Against Sexual Assault (June 18, 2020).

Under 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 25, 2020

By: /s/ Joseph Wardenski
Joseph Wardenski, *Senior Trial Counsel*
Office of the New York State Attorney General
28 Liberty Street
New York, NY 10005
Phone: (212) 416-8441
Fax: (212) 416-6007
Joseph.Wardenski@ag.ny.gov

Attorney for Plaintiff the State of New York